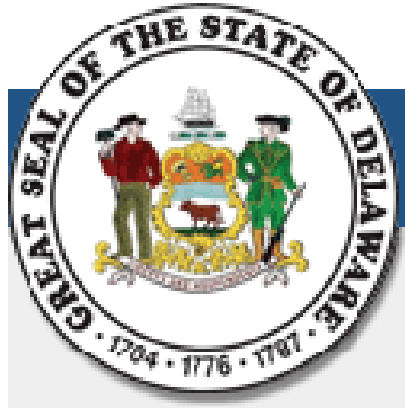


STATE OF DELAWARE



Department of Safety and Homeland Security

303 Transportation Circle
Dover, DE 19903

Request For Proposals For Special Litigation Counsel

Bid Number: 12282012DSHS

Bid Closing: December 28, 2012; 3:00 p.m.

REQUEST FOR PROPOSALS FOR SPECIAL LITIGATION COUNSEL ISSUED BY THE STATE OF DELAWARE

Executive Summary

The Department of Safety and Homeland Security (“DSHS”) is issuing this Request for Proposals (“RFP”). DSHS seeks to engage a law firm to act as Special Litigation Counsel (“Special Litigation Counsel”) representing Secretary Schiliro in *Michael A. Whaley and Valerie M. Robinson v. Lewis D. Schiliro*, CA 1:12-cv-0633 (LPS) filed in the United States District Court for the District of Delaware (“Action”). This case is an action by Plaintiffs against Secretary Schiliro pursuant to the Civil Rights Act of 1866, 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e and 19 *Del. C.* 1953 § 710, et seq. The suit alleges in part that DSHS engaged in discriminatory employment practices and retaliated against Plaintiffs based on race and age in violation of federal and state laws.

DSHS anticipates that, after conducting interviews, it will select one firm to act on behalf of DSHS as Special Litigation Counsel. DSHS reserves the right to award multiple contracts if it determines that such an award is in the best interest of the State of Delaware (“State”).

This RFP will define the scope of the work to be performed, the requirements the vendor (“Vendor”) must address in its response, the method for response, and the administrative requirements that must be followed. DSHS will advise potential Vendors of changes to any dates as may be necessary. DSHS also reserves the right to modify and/or cancel this solicitation at any time during the RFP process.

RFP Schedule

ID	Date/Time	Activity
1	December 17, 2012	Request for Proposal issued, posted on the State’s website at http://bids.delaware.gov and the Attorney General’s website at http://attorneygeneral.delaware.gov .
2	December 19, 2012	All Vendor questions regarding RFP are due
2	December 21, 2012	State issues answers to questions regarding the RFP via the State’s website at http://bids.delaware.gov and Attorney General’s website at http://attorneygeneral.delaware.gov
5	December 28, 2012; 3:00 p.m. EST	RFP Response due date
4	January 4, 2013	Begin Vendor Interviews (subject to change)
5	January 4, 2013	Begin Negotiations (subject to change)
6	January 4, 2013	Contract awarded (subject to change)

All Bidders must submit: (1) an original and 5 bound copies of their proposals (“Proposal”) and (2) one electronic version to the contact person. Proposals may be mailed or hand-delivered for receipt no later than 3:00 p.m. on December 28, 2012 (“Closing Date”). All timely Proposals become the property of the State. Requests for extensions of the Closing Date will not be granted. Any request for modification received after 3:00 p.m. on the Closing Date is late and may not be considered. The Proposals may be delivered by Express Delivery (e.g., FedEx, UPS, etc.), U.S. Mail, or by hand. Proposals shall be submitted to:

Cynthia L. Collins
Deputy Attorney General
Carvel State Building
820 N. French Street, 6th Floor
Wilmington, Delaware 19801
Direct Dial: (302) 577-8405
Fax: (302) 577-6630
Email: Cynthia.Collins@state.de.us

Each proposal must be accompanied by a transmittal letter, which briefly summarizes the proposing firm’s interest in providing the required professional services. The transmittal letter must also clearly state and justify any exceptions to the requirements of the RFP, which the applicant may have taken in presenting the Proposal. DSHS reserves the right to deny any and all exceptions taken to the RFP requirements.

The cost of preparing Proposals will be borne solely by the offerors. Proposals shall address all the questions posed by the Issuers in the order in which they appear in this request.

RFP Designated Contact:

Please submit all questions and requests for information to:

Cynthia L. Collins
Deputy Attorney General
Carvel State Building
820 N. French Street, 6th Floor
Wilmington, Delaware 19801
Direct Dial: (302) 577-8405
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All questions submitted, along with answers will be consolidated into a single Q&A document. The source of the questions will not be disclosed in the document. The Q&A document will be posted on the State’s website at <http://bids.delaware.gov> and the Attorney General’s website at <http://attorneygeneral.delaware.gov>.

1.0 GENERAL INFORMATION

1.01 Project Scope and Objectives

This RFP seeks to retain the services of Special Litigation Counsel to provide legal services to the DSHS in *Michael A. Whaley and Valerie M. Robinson v. Lewis D. Schiliro*, CA 1:12-cv-0633 (LPS) filed in the United States District Court for the District of Delaware (“Action”). This case is an action by Plaintiffs against Secretary Schiliro pursuant to the Civil Rights Act of 1866, 42 U.S.C. § 1981, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e and 19 *Del. C.* 1953 § 710, *et seq.* The suit alleges in part that DSHS engaged in discriminatory employment practices and retaliated against Plaintiffs based on race and age in violation of federal and state laws.

1.02

The DAG will not work with the Special Litigation Counsel in this matter, and the Special Litigation Counsel will work directly with Secretary Schiliro and his staff, as necessary to successfully defend the pending Action. All advice is to be provided directly to Secretary Schiliro or to one of these employees.

2.0 MINIMUM REQUIRED QUALIFICATIONS

2.01 Experience and Reputation

- A. The Vendor must have been in business at least two years.
- B. The Vendor should have at least five (5) or more year’s prior experience in representing clients before the Delaware Courts.
- C. The Vendor should have at least five (5) or more year’s prior experience in representing clients in Federal Courts.
- C. The Vendor must designate a lead attorney licensed to practice law with five (5) or more year’s litigation experience in Delaware and Federal Courts.

2.02 Professional Liability Insurance

The Vendor shall agree to maintain in full force and effect during the term of the engagement professional liability insurance in an aggregate amount of not less than \$2 million. In order to satisfy this requirement, the Vendor must:

- A. Include a statement in its Proposal affirmatively responding to this requirement; and

B. Include in its Proposal either:

- 1) A certificate of insurance or letter from its insurer demonstrating that the Vendor meets this requirement, or
- 2) A commitment letter or other evidence, satisfactory to the contact person, that Vendor will have such coverage as of the date the engagement commences.

If the Vendor is a joint venture, and one party of the joint venture does not presently have such liability insurance, this requirement may be satisfied if the members of the joint venture include in their proposal evidence, satisfactory to the contact person, that all members of the joint venture will have such coverage as of the date the engagement commences, either through actual insurance policies or an indemnity agreement by the properly insured firm, in form and substance acceptable to DSHS.

2.03 Vendor's Capacity

Each Vendor must demonstrate the capacity to perform the type of services needed by DSHS described in Section 1.01 above. The Vendor must be available at all times to render services required under the engagement.

3.0 TECHNICAL PROPOSAL FORMAT

The following information shall be provided in each proposal in the order listed below. A Vendor is expected to provide a response for each requirement listed in this RFP. Failure to respond to any request for information within this proposal may result in rejection of the proposal at the sole discretion of the DSHS.

3.01 General

All technical proposals shall be prepared with a concise description of the Vendor's capabilities to satisfy the minimum qualifications of Section 2 above and the information requested under Section 3 below. Vendors should organize their proposals so that their responses correspond to the specific subsections to the extent possible without unnecessary repetition.

3.02 Required Information

The proposal shall contain the information described below. Joint ventures should provide the information separately for each firm.

A. Vendor's Prior Experience

1. General Information:

- (i) Within the past three years, have there been any significant developments in your firm such as changes in ownership or restructuring? Do you anticipate any significant changes in the future? Please describe.
- (ii) Has your firm or an attorney in your firm's employ even been disciplined or censured by any regulatory body? If so, describe the principal facts.
- (iii) Within the last five years, has your firm, or a partner or attorney in your firm, been involved in litigation or other legal proceedings relating to provision of legal services? If so, provide an explanation and indicate the current status or disposition.
- (iv) Please describe your firm's backup procedures in the event one or more attorneys assigned to the DSHS leave the firm. Identify the key attorney who will be the primary contact and lead counsel in providing services to DSHS, whose continuing status as such is an essential element of this contract.

2. Litigation Experience:

- (i) Describe the Vendor's experience in the last five (5) years representing or advising public sector clients;
- (ii) Describe the Vendor's experience in litigating employment discrimination, age and race discrimination, retaliation and federal civil rights claims during the last five (5) years;
- (iii) Describe the Vendor's experience in litigating matters before the Federal District Court in Delaware;
- (iv) Describe the Vendor's experience in Delaware state courts during the last five (5) years, including any involvement with issues relating to administrative law, appeals of administrative law issues, employment and discrimination issues generally;

- (v) Provide a brief description of areas of the law related to the purpose of this RFP in which the Vendor has an expertise.

B. Conflicts of Interest.

1. In general. If a conflict of interest arises, the Vendor should be willing to continue to represent DSHS and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The State may entertain a request for a waiver of a Vendor's representation of a party in litigation involving a unit of State government other than the defendants, but does not expect to waive any other conflicts. The defendants, reserve the right, in their sole discretion, to select another approved law firm to work on a particular matter if a conflict is not resolved to its satisfaction.

Each Vendor shall complete a conflicts check for the State, its agencies and Secretary Schiliro, and the identified plaintiffs. Each Vendor shall identify any conflicts of interest that may arise if the Vendor serves as Special Litigation Counsel and shall describe in its Proposal how it proposes to deal with such conflicts. Conflicts may arise not only from attorneys names on the contract but also from representation of parties involved in the transactions or other matters involving the defendants, by any member of the firm, regardless of whether that attorney is in the same office or a different office of the firm.

2. The State recognizes that Vendors may have conflicts due to previous representations. The State encourages Vendors with conflicts to submit proposals, identify the conflicts and describe recommended resolutions

4.0 PRICE PROPOSAL FORMAT

4.01 Billing Rates

- A. Current billing Rates for all attorneys assigned to represent the defendants, pursuant to this RFP and any applicable discounts;
- B. Current billing Rates for all para-professionals assigned to represent the defendants, pursuant to this RFP and any applicable discounts;

- C. No compensation will be permitted for the services of law clerks and law school graduates not admitted to practice.

4.02 Alternative Pricing Proposals

Although each Vendor is required to submit a price proposal containing the information set forth in Part 4.1, DSHS will also accept proposals for alternative billing arrangements, that enhance the value and efficiency of the services to be provided. The Vendor may submit a statement, not more than one page in length, with respect to any alternative pricing proposal.

5.0 EVALUATION OF PROPOSALS

The selection committee shall evaluate the proposals. During the evaluation process the selection committee may, at its discretion, request any or all firms to make oral presentations or participate in a formal interview. Such presentation or interviews will provide firms with an opportunity to answer questions about a firm's Proposal. Not all firms may be asked to make an oral presentation or to attend an interview.

5.01 Selection Criteria

The selection of the firm to provide legal services will be based on an evaluation of the Proposals to determine which Proposal reflects the best value to DSHS, with technical factors generally being considered more important than cost of services. The selection of the firm to provide legal services will be based upon the following technical factors in descending order of importance.

- A. Experience of the firm and the individual attorneys in litigating employment discrimination issues and defending against violations of the Civil Rights Acts of 1866 and 1964;
- B. Experience of the firm and the individual attorneys representing governmental agencies generally;
- C. Experience of the firm and the individual attorneys representing clients in challenges based on constitutional issues;
- E. Experience of the firm and the individual attorneys representing clients in US District Court;
- F. Administrative structure of representation (i.e., proposed staffing assignments), soundness of approach to representation and understanding of the needs of DSHS;

- G. Demonstrated ability to perform the services referred to under Project Scope and Objectives, and
- H. References and recommendations of other clients.

5.02 Contract Negotiation

DSHS intends on opening negotiations with Vendors that DSHS determines have a reasonable likelihood of being awarded a contract based on the proposals that are submitted. Negotiations will focus on any technical weaknesses or deficiencies in proposals as well as cost and pricing issues.

A written contract with each of the selected the law firms will be required. Each contract must be approved by the Attorney General of the State of Delaware and the Governor of the State of Delaware pursuant to 29 *Del. C.* § 2507. The successful firm will be required to comply with the DDOJ Outside Counsel Billing Policy.

5.03 Contract Award

DSHS reserves the right to award all, part, or none of this contract. DSHS intends to award a contracts to one law firm if deemed appropriate and desirable.